is said to be, that "in every case the degree of care to be exercised is dependent upon the circumstances." Followed in *Keegan v. Railroad Co.*, 54 N. Y. Supp. 391 (1898); *Zimmer v. Railroad Co.*, 55 N. Y. Supp. 308 (1898), and in the present case. But this principle seems to have been accepted in no other State. Its soundness is questioned in 3 *Thomp., Neg.*, Secs. 2748, 3481 (ed. 1902).

CARRIERS—INJURY TO PASSENGER ON FREIGHT TRAIN—LIABILITY.—CRUM v. KANSAS, FT. S. & M. RY. CO., 68 S. W. 88 (Mo.).—Plaintiff was injured by sudden stop of freight train on which he was a passenger. *Held*, that he was entitled to look for only such security as that mode of conveyance is reasonably expected to afford; otherwise the liability of the railroad company is the same as though he was a passenger on a passenger train.

This decision is generally upheld. *Crine v. East Tenn. V. & G. Ry. Co.*, 84 Ga. 651; *Fitchburg R. Co. v. Nichols*, 85 Fed. 945; *Ill. Cent. R. Co. v. Axley*, 47 Ill. App. 307. But in *R. Co. v. Horst*, 93 U. S. 291, the U. S. Supreme Court held that as to passengers on freight trains "the highest degree of carefulness and diligence is expressly exacted."

CONTRACTS—PREVENTION OF PERFORMANCE BY THIRD PERSON—DAMAGES—PROFITS.—PENDER LUMBER CO. v. WILMINGTON IRON WORKS, 41 S. E. 797 (N. C.).—Plaintiff was prevented from performing a contract by failure of a third person to repair plaintiff's machinery according to contract. *Held*, in an action for damages consisting of the loss of profits, that an estimate of cost of production of certain articles was properly admitted in evidence. Furches, C. J., *dissenting*.

Damages for the loss of profits is an extraordinary special damage. If the data of estimating the profits be so definite and certain that they can be ascertained by reasonable calculation, they can be recovered. *Jones v. Call*, 96 N. C. 337; *Williams v. Barton*, 13 La. 404. But the party at fault must have had notice either of the nature of the contract itself, or explanation that such damages would ensue from the non-performance. Moreover, the plaintiff must not remain inactive but should make reasonable exertions to reduce his losses and diminish responsibility of the party in default. *Railroad Co. v. Ragsdale*, 46 Miss. 458.

CONTRIBUTORY NEGLIGENCE—BURDEN OF PROOF—AUTOMOBILES.—THIES v. THOMAS, 77 N. Y. SUPP. 276.—A boy of six, while playing between blocks, was run over by an automobile and killed. In an action by administrator, *held*, that the burden of proof, to show absence of contributory negligence, was on plaintiff.

Where the burden of proof lies, to establish contributory negligence, is a much disputed question. This ruling, though following the later New York decisions, *Whalen v. Citizens' Gas Co.*, 151 N. Y. 70, is not followed uniformly in the earlier New York cases. *Jackson v. Hudson R. R. Co.*, 22 N. Y. 65; *Lorickio v. Brooklyn Heights R. Co.*, 60 N. Y. Supp. 247. The opposite rule is followed in the Federal Courts, *Chicago G. W. Ry. Co. v. Price*, 97 Fed. R. 423; in England, *Beach, Cont. Neg.*, Sec. 156; and in the majority of the States. *Allen v. Township of Warwick*, 9 Pa. Sup. Ct. 507; *Pullman Palace Car Co. v. Adams*, 24 So. 912 (Ala.); *Gulf C. and S. F. Ry. Co. v. Shieder*, 30 S. W. 902 (Tex.). This last case reviews the whole course of decisions

on this subject, in an exhaustive opinion. For the Massachusetts rule see *Warren v. Fitchburg R. R. Co.,* 8 Allen 227.

CORPORATIONS—CONTRACT—CONSIDERATION—EQUITABLE RELIEF.—KENDALL V. KLAPPERTHAL CO. ET AL., 52 ATL. 92 (PA.).—Two corporations were created, owned and managed in the interest of a third corporation. Certain directors of the parent company indorsed notes of one of the others and having paid them, were reimbursed from funds of the original company. *Held,* that their relation was a sufficient consideration to warrant this.

There can be no doubt that directors of a corporation can reimburse themselves for loss from indorsement of its paper; 1 *Moraw., Priv. Corp.,* Sec. 526; 3 *Thompson, Corp.,* Sec. 4069; but an extension of the dictum to accord with the above facts seems contrary to the rule that, unless expressly authorized by charter, one corporation cannot lend its credit to another. *Smith v. Alabama L. Ins. Co.,* 4 Ala. 558. So it was ultra vires for a railroad corporation to guarantee the dividends of an elevator company. 30 *Am. and Eng. R. R. Cas.* 522. The decision in the case in hand rests solely on the basis that, if necessary, courts of equity will look behind the artificial personality to the individuals who compose it. *Rice's Appeal,* 79 Pa. 168; *Gas Co. v. West,* 50 Iowa 16.

DEFECTIVE SIDEWALK—WHAT CONSTITUTES.—BIEBER V. ST. PAUL, 91 N. W. 20 (MINN.).—Plaintiff was injured by slipping on a hexagonal cement block depressed on one edge an inch and a quarter below the level of the sidewalk. *Held,* that this defect was such as to render the city liable for damages. Lewis, J., *dissenting.*

The extent of use of the street is made the test of liability, but the courts generally hold that slight defects will not render the municipality liable. In *Beltz v. Yonkers,* 148 N. Y. 67, for a similar, but more pronounced defect there was no liability. See also *Jackson v. Lansing* (Mich.), 80 N. W. 8; *Morgan v. Lewiston,* 91 Me. 566; *Morris v. Philadelphia,* 45 Atl. 1068 (Pa.), and 24 *Am. and Eng. Enc. Law* 90.

EVIDENCE—DECLARATIONS—PEDIGREE.—WASHINGTON V. THE BANK FOR SAVINGS IN CITY OF NEW YORK, 63 N. E. 831 (N. Y.).—Testimony as to declarations of deceased to the effect that *she had never had any children* was introduced for the purpose of showing that accounts with defendant bank "in trust for son John" and "in trust for son Thomas" were in reality for the benefit of the deceased herself. The testimony was *held* competent as a matter of pedigree.

From the time of *The Bukley Peerage Case,* 4 Camp. 401 (decided in 1811), on, this exception to the rule against the admission of hearsay evidence has been repeatedly recognized both here and in England. *Stein v. Bowman,* 13 Pet. 209; *Eisenlord v. Clum,* 126 N. Y. 552; *Dawson v. Myall,* 45 Minn. 408. While, undoubtedly, the principle involved in declarations as to the existence, or non-existence, of children is the same, nevertheless authorities in support of the latter statement are so rare as to make this decision worthy of notice. See *Butrick v. Tilden,* 155 Mass. 461.

FOREIGN CORPORATIONS—WHAT CONSTITUTE—REMOVAL OF CAUSES.—CALVERT V. SOUTHERN RY. CO., 41 S. E. 963 (S. C.).—The South Carolina statute fixes conditions under which foreign corporations may become domestic. The